

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

North Central Cooperative & Doug Frye

**ADMINISTRATIVE
CONSENT ORDER
NO. 2010-AFO-46**

TO: Patrick Staudt, President
North Central Cooperative
1661 180th Street
Clarion, IA
50525

Doug Frye
3255 290th Street
Dows, IA
50071

I. SUMMARY

This Administrative Consent Order (Order) is entered into between North Central Cooperative (North Central Coop), Doug Frye and the Iowa Department of Natural Resources (Department). North Central Coop and Doug Frye hereby agree to pay a penalty in the amount of \$6,000.00 and cease all illegal discharges to waters of the State.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Carl Berg
IDNR Field Office #2
PO Box 1443
Mason City, IA 50401
Ph: 641/424-4073

Legal Issues

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
Wallace Building 502 E. 9th St.
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Wallace Building
502 E. 9th St
Des Moines, Iowa 50319-0034
Attn: Carrie Schoenebaum

11351 PM 3:41 10/05/10

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
North Central Cooperative and Doug Frye**

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1, or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties herby agree to the following statement of facts:

1. North Central Coop operates 8 facilities in Iowa. It is a farmers' cooperative which purchases and markets the handling of grain, feed, fertilizer, chemical, farm supplies, petroleum and related services. Doug Frye leases land located at Section 6, T90N R22W Oakland Township, in Franklin County Iowa and hired North Central Coop to land apply chicken litter to this field. This land application resulted in an illegal discharge of pollutants to a water of the state.
2. On March 10, 2010, the Department received a complaint alleging that chicken litter was being land applied through snow and standing water on a field located at Section 6, T90N R22W Oakland Township, in Franklin County Iowa. This land is owned by Lowell Skinner and leased by Doug Frye. Upon receipt of this complaint Eric Wiklund, an Environmental Specialist with the Department, went to the site to investigate. Mr. Wiklund observed snowmelt runoff from the field upon which chicken litter had been land applied, flowing to the road ditch. A field test of the runoff was taken which indicated that the ammonia levels significantly exceeded 3 mg/l.
3. On March 11, 2010, Carl Berg, an Environmental Specialist with the Department, returned to the site to investigate. Mr. Berg documented runoff from the same field flowing towards the road ditch. As Mr. Berg walked the ditch he observed an area of melted snow above a tile intake. Mr. Berg took a field test of the runoff at the point it flows into the tile intake. This sample indicated that a high level of ammonia was present.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
North Central Cooperative and Doug Frye

Throughout the day Mr. Berg made the following observations and took field tests, laboratory samples, photographs and video at the below sites:

Sample Site	Parameter		
	TKN	NO ₂ -NO ₃ -N	NH ₃ -N
S-13 Field Runoff	57	<0.1	40
Dows Runoff ¹	450	0.2	65
S-13 Tile Intake	59	0.11	40

4. Next Mr. Berg went to Norman Hansen's residence which is located north of the affected field. Mr. Hansen stated that North Central Coop land applied chicken litter on March 10, 2010, the affected field is owned by Lowell Skinner, and it is currently rented by Doug Frye.

Later that day Mr. Berg called Steve Peters of North Central Coop to discuss the situation. Mr. Peters stated that North Central Coop land applied the chicken litter on Wednesday, March 10, 2010. The litter had been stockpiled in Mr. Frye's field for a couple of weeks. Mr. Frye contacted the Coop and asked them to spread the manure. He specifically asked North Central Coop to not spread the chicken litter on the lowest parts of the field in case the river swelled. Mr. Peters also stated that Mr. Frye said there were no tile intakes in the field. Mr. Peters agreed to put a bucket over the tile intake to prevent further discharge.

5. On March 12, 2010, Mr. Berg returned to the site to investigate. At this time the air temperature was significantly warmer than the prior day. Because of this there was an increase in snow melt. Mr. Berg observed a 5 gallon bucket over the intake to the tile line, most of the snow had melted near the intake and there was very little pooled water near the intake. Mr. Berg took a field test of the pooled water which indicated that the ammonia level was over 3 mg/l.

When Mr. Berg returned to his office Mr. Peters contacted him to discuss the complaint. Mr. Berg informed him that when the sample results were finalized he would inform him of the results and how the Department planned to handle the case. Mr. Berg requested a copy of the chicken litter application records. These records were received by Mr. Berg on March 15, 2010. The records show that the application instructions stated "Don't spread bottom areas where the river may come out" and that there are "no intakes in [the] field." The records indicated that the application occurred on March 10, 2010, from 7:30 am to 2:30 pm and that the field conditions were marked as frozen, snow covered, and wet. The record also indicated that the condition of the chicken litter was very wet.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
North Central Cooperative and Doug Frye**

6. On April 1, 2010, a Notice of Violation was sent to North Central Coop and Mr. Frye for violations of Iowa's water quality laws and regulations.

IV. CONCLUSIONS OF LAW

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 455B.186 and 567 IAC 62.1 prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit issued by the Department. A National Pollution Discharge Elimination System (NPDES) permit has not been issued for this facility. Therefore, the foregoing facts establish that this provision has been violated.

2. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The above facts indicate a violation of one or more of these criteria.

V. ORDER

THEREFORE, the Department hereby orders and North Central Coop and Mr. Frye consent to do the following:

1. In the future properly land apply manure in a manner that will not cause runoff;
2. Cease all illegal discharges to waters of the State; and
3. North Central Coop and Mr. Frye shall be jointly and severally liable for a penalty in the amount of \$6,000.00 which is due within 30 days of the date the Director of the Department signs this Order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for violations of water pollution control laws; more severe criminal sanctions are also provided.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
North Central Cooperative and Doug Frye**

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; 567 IAC Chapter 10. Pursuant to rule 567 IAC 10.2, the Department has determined that the most equitable and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty. The administrative penalty is determined as follows:

a. Economic Benefit. Mr. Frye and North Central Coop land applied the chicken litter while the ground was frozen and wet in an attempt to avoid or reduce compaction of the soil. Therefore, Mr. Frye avoided compaction of the soil and the cost of ripping the soil (which is a method that alleviates compaction). The average cost to V-rip a field according to Iowa State University Extension FM1698 is \$17.00/acre. It is estimated that at least 60 acres may have benefited from the land application; therefore, the economic benefit is calculated at \$1,000.00 for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. This matter involves actual impact to water quality. Multiple rule and statutory provisions were violated including discharge to water of the State, and violation of water quality standards. The violations threaten the integrity of the water quality program. For these reasons, \$3,000.00 per day could be assessed for this factor for each of the above-cited violations. However, the Department has decided to handle this matter administratively therefore, \$2,500.00 is assessed for this factor.

c. Culpability. Land application of chicken litter on snow covered ground is an activity that poses a substantial environmental threat and therefore, demands the highest level of care. For a release such of this to occur shows failure on behalf of North Central Coop and Mr. Frye to apply the appropriate standard of care. Moreover, the manure application records indicated that the field conditions were frozen, snow covered and wet. Therefore, it's apparent that North Central Coop and Mr. Frye were aware of the poor application conditions;

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
North Central Cooperative and Doug Frye**

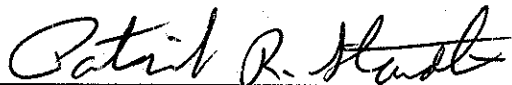
nevertheless they completed the application and did not take measure to stop the manure from running off and flowing to a tile line and a water of the state. Therefore, \$2,500.00 is assessed for culpability.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC Chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the North Central Coop and Mr. Frye. By signature to this Order, all rights to appeal this Order are waived.

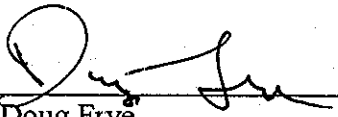
VIII. NONCOMPLIANCE

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.




Patrick Staudt, President
North Central Cooperative

Dated this 4 day of
Oct, 2010.



Doug Frye

Dated this 4 day of
Oct, 2010.



Director Iowa Department of Natural Resources

Dated this 7 day of
October, 2010

EPA, Field Office 2, Carrie Schoenebaum; Carl Berg, VIII D. 1 (a) 3 (a) (b).